IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 63 OF 2004

IN

SUMMARY SUIT NO. 3113 OF 2003

M/s.BPL Mobile Communications Ltd. .. Plaintiff

versus

Sole Proprietor of Mrs.Food Services.. Defendant

...

Mr.S.K. Nair for the plaintiff.

Mr.R.N.Narula i/b Anuj Narulla for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 21st February 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The defence raised by the defendant cannot be said to be sham, illusory and fictitious. The letter dated 1st June 2001 (Exhibit-1 to the affidavit in reply) contains terms and conditions agreed between

the parties. Paragraph no.4 of the said letter discloses that the plaintiff had agreed to release two half page advertisements in the Times of India on 15th June 2001 and 6th July 2001. This was confirmed by letter dated 5th June 2001 (Exhibit-2 to the affidavit in reply). Admittedly, this was not done. Therefore, the defendant would be entitled atleast to the credit of the costs of such two advertisements.

3. There appear to be reciprocal promises made by the parties which were to be performed reciprocally. Prima facie, it appears that there has been some breaches from either side. In the circumstances, it cannot be said that the defendant has no defence. The defendant is therefore, granted unconditional leave to defend the suit. The suit shall stand transferred to the list of commercial causes. The defendant to file written statement within a period of four weeks.

D.G. KARNIK, J